

SECOND DIVISION

[G.R. No. 102786, August 14, 1998]

**ALEJANDRO B. DE LA TORRE, PETITIONER, VS. COURT OF
APPEALS, AND THE PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This case is here on appeal from the decision of the Court of Appeals, dated June 18, 1991, which affirmed the decision of the Regional Trial Court of Quezon City finding petitioner Alejandro B. de la Torre guilty of qualified theft and sentencing him to an indeterminate prison term of 6 years, 1 month, and 11 days, as minimum, to 8 years and 1 day, as maximum, and ordering him to indemnify the Manila Electric Company (MERALCO), the offended party, in the amount of P41,786.00.

The facts are as follows:

In the afternoon of April 18, 1989, Alexander Manalo, an electrical engineer of MERALCO assigned to inspect six electric meters installed in the premises of the Cathay Pacific Steel and Smelting Corporation (CAPASSCO) on De la Cruz Street in San Bartolome, Novaliches, Quezon City, discovered that the said electric meters were missing. He reported the loss to the MERALCO office in Ortigas Avenue, Pasig City. On April 20, 1989, Manalo and Felino Olegario, also of MERALCO, gave statements to the Northern Police District at Camp Karingal, Sikatuna Village, Quezon City regarding the loss of the electric meters. They suspected that CAPASSCO employees must have damaged the electric meters while tampering with them and that to conceal the attempt, the employees must have removed the electric meters. They expressed suspicion that MERALCO personnel were involved.

Patrolman Edgar Enopia, who was assigned to the case, proceeded to the scene of the crime and inquired from people he saw there if they had seen the electric meters being taken down from the post near the gate of CAPASSCO. According to Enopia, one of those he asked, Danilo Garcia, said he had seen at about 10:00 p.m. on April 11, 1989 four crewmembers in a MERALCO service truck, with the number 522 painted on its side, removing the electric meters. Acting on this lead, Enopia asked MERALCO for the identities of the men, one of whom turned out to be petitioner de la Torre. It appears that MERALCO service truck number 522 had specific crewmembers assigned to it.

On July 4, 1989, the crewmembers were taken to the NPD headquarters for investigation. They were included in a line-up of eight (8) persons. Garcia pointed to petitioner de la Torre as the leader of the group which took down the electric meters from the CAPASSCO premises, but he did not recognize the three (3) other crewmembers.

Based on the statements of Alexander Manalo, Felino Olegario, Edgar Enopia, and Danilo Garcia, Assistant City Prosecutor Demetrio Macapagal filed on July 13, 1989 an information charging petitioner de la Torre with Qualified Theft as defined in Arts. 309 and 310 of the Revised Penal Code:

That on or about the 11th day of April, 1989, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, ALEJANDRO DELA TORRE Y BERNAL, being then employed as leadman of a 5-men service crew of linemen of MERALCO, with grave abuse of confidence, in conspiracy with his co-accused JOHN DOE, PETER DOE and CHARLES DOE, conspiring together, confederating with and mutually helping each other, with intent to gain and without the knowledge and consent of the owner thereof, did then and there wilfully, unlawfully and feloniously take, steal and carry away the following properties owned by the Manila Electric Company (MERALCO) which were installed at the premises of the CATHAY PACIFIC STEEL AND SMELTING CORPORATION (CAPASSCO), located at No. 292 P. dela Cruz Street, San Bartolome, Novaliches, this City, customers of the aforesaid MERALCO, to wit:

One (1) GE	
Type C-9,	
120 volts,	---
Co. No.	P13,025.00
42GRM-219	

One (1) GE	
Type VW-	
63-A,	
120 volts,	--
Co. No.	-4,997.06
41G208	

One (1) GE	
Type V-63-	
A,	
120 volts,	---
Co. No.	2,870.94
41GD-558	

One (1) GE	
Type G-9,	
139 volts, 3	--
phase,	-13,025.00
No.42GRIM	
1091	

One (1) WH	
Type	
D4A-2, 3	--
phase, Co.	-4,997.06
No.41D4AW-	
92	

One (1)
Reactive

Meter,
No. 41CA-34 2,870.94

with an aggregate value of P41,786.00, Philippine Currency, belonging to MANILA ELECTRIC COMPANY, represented by FELINO R. OLEGARIO, to the damage and prejudice of the latter in the aforementioned amount.

CONTRARY TO LAW.^[1]

The case was raffled to Branch 92 of the RTC of Quezon City, presided over by Judge Pacita Cañizares-Nye. Trial was held from December 28, 1989 to February 1, 1990. In a decision rendered on March 16, 1990, Judge Cañizares-Nye, relying heavily on the testimony of Garcia, found petitioner de la Torre guilty of Qualified Theft and thus sentenced him to an indeterminate prison term of 6 years, 1 month, and 11 days of *prision mayor*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum; and ordered him to pay MERALCO the amount of P41,786.00.

Petitioner de la Torre appealed to the Court of Appeals, contending first, that his constitutional rights were violated during the custodial investigation conducted in the case; second, that the RTC erred when it admitted in evidence the testimonies of the prosecution witnesses, when the same were not formally offered; third, that the RTC took into account hearsay evidence in arriving at its judgment; and fourth, that the uncorroborated testimony of Garcia was insufficient to establish his guilt beyond reasonable doubt. However, the Court of Appeals^[2] affirmed the lower court's decision.^[3] The Court of Appeals subsequently denied reconsideration. Hence, this appeal.

First. Petitioner de la Torre alleges violation of his constitutional rights under Art. III, §12(1) of the Constitution which provides that "any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel." Petitioner de la Torre claims he was not informed of his right to remain silent and to have the assistance of counsel during the investigation conducted on July 4, 1989 at the NPD headquarters, where the crewmembers of MERALCO service truck number 522 were presented in a police line-up. He further invokes the exclusionary rule in par. 3 of the same §12 that "any confession or admission obtained in violation of [this rule] shall be inadmissible in evidence against him."

In *Gamboa v. Cruz*,^[4] this Court ruled that "no custodial investigation shall be conducted unless it be in the presence of counsel, engaged by the person arrested, or by any person in his behalf, or appointed by the court upon petition either of the detainee himself, or by anyone in his behalf, and that, while the right may be waived, the waiver shall not be valid unless made in writing and in the presence of counsel."^[5] However, this applies only from the moment the investigating officer begins to ask questions for the purpose of eliciting admissions, confessions, or any information from the accused. A police line-up is not considered part of any custodial inquest because it is conducted before that stage is reached.^[6]

In the instant case, petitioner de la Torre, together with the other crewmembers of MERALCO truck number 522, was merely included in a line-up of eight (8) persons from which he was picked out by Garcia as the leader of the group which had removed the electric meters from the CAPASSCO premises. Until then, the police investigation did not focus on petitioner. Indeed, no questions were put to him. Rather, the questions were directed to witnesses of the complainant. There is, therefore, no basis for petitioner's allegations that his rights as a suspect in a custodial interrogation were violated.

Second. Petitioner contends that the trial court admitted in evidence the testimonies of the prosecution witnesses when the fact is that before they testified, their testimonies were not formally offered as required by Rule 132, §35 of the Rules of Court. Indeed, as held in *People v. Java*:^[7]

. . . Rule 132, Section 34 of the Revised Rules of Court requires that for evidence to be considered, it should be formally offered and the purpose specified. . . .

Under the new procedure as spelled out in Section 35 of the said rule which became effective on July 1, 1989, the offer of the testimony of a witness must be made at the time the witness is called to testify. The previous practice was to offer the testimonial evidence at the end of the trial after all the witnesses had testified. With the innovation, the court is put on notice whether the witness to be presented is a material witness and should be heard, or a witness who would be testifying on irrelevant matters or on facts already testified to by other witnesses and should, therefore, be stopped from testifying further.

. . . Section 36 of the aforementioned rule requires that an objection in the course of the oral examination of a witness should be made as soon as the grounds therefor shall become reasonably apparent. Since no objection to the admissibility of evidence was made in the court below, an objection raised for the first time on appeal will not be considered.^[8]

Petitioner raised this point, however, only in the Court of Appeals. He thus waived his objection by his failure to raise it at the close of the presentation of the prosecution evidence in the trial court. As already noted, the trial in this case took place from December 28, 1989 to February 1, 1990. That was after the adoption of the new rule which required that the offer be made at the beginning of the testimony of a witness. Petitioner should have invoked this rule and objected to the testimonies of the prosecution witnesses, if not before each of their testimonies, then at least at the time their testimonies were formally offered at the close of the presentation of the prosecution evidence. Not having done so, he must be deemed to have waived his objection based on this ground. Consequently, the trial court committed no error in considering the testimonies of the prosecution witnesses in its decision despite the fact that such testimonies had not been offered before they were given.

Third. Petitioner claims that, in violation of the hearsay rule, written statements pertaining to disputed facts were considered by the trial court in its decision without presenting the declarants at the trial for examination.